

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JEREMY WILSON,

Plaintiff,

ORDER

- v -

CITY OF NEW YORK, et al.,

CV-06-229 (ARR)(VVP)

Defendants.

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The defendant has moved to compel the plaintiff to provide a release to permit the defendant to obtain his criminal record, including matters that are sealed. The plaintiff objects on the ground that the information is irrelevant. This is a section 1983 case alleging false arrest and malicious prosecution, and which involves a lengthy detention of the plaintiff before trial. Since the plaintiff seeks damages for emotional distress arising from his arrest and detention, his prior experiences involving arrest and detention, including those which ended favorably and whose records are therefore sealed, may be relevant to the damages determination the jury will be asked to make at trial. Clearly, it could be credibly argued that one who has had a number of prior arrests and detentions is likely to have suffered less distress than one who has never before been detained. The request for such information is therefore reasonably calculated to lead to evidence admissible at trial. *See* Fed. R. Civ. P. 26(b)(1); *see also Udemba v. Nicoli*, 237 F.3d 8, 15 (1st Cir. 2001) (other arrest evidence held relevant to issue of emotional distress). There may of course be a variety of reasons why such evidence would not ultimately be admitted at trial. But such determinations are best left to trial, once discovery of all potentially relevant information is obtained. Accordingly, the plaintiff's objection to providing such a release is overruled and he is directed to provide a release within ten days after the defendant presents his counsel with an appropriate form of the release.

SO ORDERED:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
December 13, 2006